

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 373 of 1997

in

SPECIAL CIVIL APPLICATION No 6013 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DAHYABHAI KHIMJI SHAH THROUGH CONSTITUTED ATTORNEY

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Petitioner
MR PB BHATT, AGP, for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT

Date of decision: 22/10/97

ORAL JUDGEMENT(Per C.K.Thakker, J.)

This appeal is filed against a judgment and order

passed by the learned Single Judge in Special Civil Application No.6013 of 1984 decided on 3rd March, 1997. In the memo of appeal, a note was put by the learned counsel for the appellant stating that only State is necessary party and no notice may be issued to other respondents. A prayer is also made by Mr Y.S.Mankad, learned counsel appearing for the appellant that the appellant does not claim any relief against respondents Nos.2 to 2.8.2 and therefore those respondents may be permitted to be deleted. Permission is granted. The names of those respondents are ordered to be deleted. Respondent No.1, State of Gujarat, will now be the sole respondent in appeal.

2. Admitted. Mr P.B.Bhatt, learned AGP, waives service of notice of admission. In the facts and circumstances, the matter is taken up for final hearing today.

3. When the appeal was placed for admission earlier, this Court passed the following order on 2nd July, 1997:

"Notice returnable on 4.8.97 particularly in the light of the observations made by the learned single Judge in para 8 of the judgment."

Paragraph 8 of the judgment of the learned single Judge reads as under :

In the result, this Special Civil Application fails and the same is dismissed. It is a case where for all these years, the petitioner has retained possession of the suit lands. Not only that, but he also enjoyed fruits therefrom and as such, the petitioner is directed to pay Rs.1,000/- per acre per year by way of damages for use and occupation of the land in dispute to the respondent No.1, for the period from the date of interim order, i.e. 21.1.85 till this day. This amount has to be deposited by the petitioner in the office of the Mamlatdar within a period of two months from the date of receipt of certified copy of this order, failing which, the respondent shall then to proceed to realize this amount as land revenue or may take any appropriate action for violation directions of this Court. The petitioner is directed to hand over the possession of the disputed land to the respondent No.1 within a period of two months from today. In case the possession is not given to respondent No.1 by the petitioner within the period

aforesaid, then he shall be liable to pay Rs.100/- per day per acre till the possession is delivered by him or taken by the respondent. The petitioner is directed to pay Rs.2,000/- as the costs of this petition to respondent No.1. Rule discharged. Interim relief stands vacated."

4. The learned counsel for the appellant could not point out any infirmity in the judgment so far as the merits are concerned. We, therefore, do not interfere with the order passed on merits.

5. Mr Mankad, however, submitted that the directions issued by the learned Single Judge in para 8 of the judgment deserve interference by this Court. He submitted that apart from the fact that no inquiry was ordered, no finding was arrived at and no adjudication of mesne profits was made, physical possession of the land in question was not with the appellant. Possession was handed over by the appellant to the authorities since long. He further submitted that interim order was granted by the Court in a petition of 1984 and the same was disposed of recently in 1997. In this circumstance, the order regarding payment of mesne profits and/or damages and costs was not called for.

6. In our opinion, when a statement was made that the appellant has handed over possession to the authority and that interim relief was granted in Special Civil Application of 1984 by this Court, the directions contained in para 8 ought not to have been issued by the learned single Judge. To that extent, therefore, the order must be set aside. All the directions in para 8 are hereby set aside.

7. The appeal is accordingly partly allowed to the aforesaid extent, in the circumstances, with no order as to costs.

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(vjn)